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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,070	10/28/2003	Hasdi Matarasso	174.1033	4178
23280	7590	06/29/2004	EXAMINER	
DAVIDSON, DAVIDSON & KAPPEL, LLC 485 SEVENTH AVENUE, 14TH FLOOR NEW YORK, NY 10018			SIMONE, CATHERINE A	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/695,070	Applicant(s) MATARASSO, HASDI	
	Examiner Catherine Simone	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/28/03</u> | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 8, 20 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "of a cushioning cells side is carved" in claim 8 is deemed vague and indefinite. What is meant by this recitation? Is this some kind of shape? Clarification is requested.

Claim 20 recites the limitation "said sealing line" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-4, 9-17 and 19-24** are rejected under 35 U.S.C. 102(b) as being anticipated by Larson et al. (4,017,351).

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Regarding **claim 1**, Larson et al. discloses a cellular cushioning material comprising a sheet formed from at least two layers made of plastic welded to each other on either longitudinal side, the at least two layers are welded to each other in a diagonal manner across their widths, forming a plurality of diagonally oriented sleeves (see Fig. 10; also see col. 7, lines 65-68 and col. 8, lines 1-8). Regarding **claim 2**, note the sleeves (Fig. 10, #95) terminate downwardly before contacting the air entry passage side (Fig. 10, #94), thereby forming a longitudinally extending air entry passage. Regarding **claim 3**, note each of the diagonally oriented sleeves (Fig. 10, #95) is substantially sealed on all sides (see col. 8, lines 4-8), except for a small opening at the side of the sleeve (Fig. 10, #96) facing the air entry passage (Fig. 10, #94) for allowing air from the air entry passage to enter the respective sleeves. Regarding **claim 4**, note at least two individual cushioning cell, when inflated (Fig. 10, #95). Regarding **claim 9**, note the material comprises further an un-inflated area (Fig. 10, #93). Regarding **claim 10**, note the material further comprises perforation (Fig. 10, #99) along welding lines located where the plastic layers have been welded to one another for enabling separation of the cellular cushioning material. Regarding **claim 11**, note the material is welded by at least one sealing line (see col. 2, lines 38-40 and col. 4, line 60). Regarding **claim 12**, note the at least one sealing line is placed longitudinally along the diagonally oriented sleeves and extends in a direction intersecting the sleeves and an air entry passage (see col. 2, lines 38-40 and col. 4, lines 56-60) so as to form a row of multiple inflatable cushioning cells (Fig. 10, #95). Regarding **claim 13**, note the air entry passage (Fig. 10, #94) is located at one side of the cellular cushioning material. Regarding **claim 14**, note the air entry passage (Fig. 10, #94) is located in the central region of the cellular cushioning material. Regarding **claim**

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15, note the air entry passage (Fig 10, #94) is located in a region located between the sides of the cellular cushioning material. Regarding **claim 16**, note the at least two cushioning cell (Fig. 8, #19) extend transversally of the sheet, the entire width of the sheet. Regarding **claim 17**, note the at least one cushioning cell (Fig. 10, #95) extends at an angle relative to a side sheet, the entire width of the sheet. Regarding **claim 19**, note the diagonally oriented sleeves (Fig. 10, #95) have edges of a curvature.

Regarding **claim 20**, Larson et al. discloses a plastic cellular cushioning material sheet comprising at least two layers of plastic welded in a predetermined manner so as to have a plurality of inflatable diagonally oriented sleeves extending in a first direction (see Fig. 10; also see col. 7, lines 65-68 and col. 8, lines 1-12) and an air entry passage (Fig. 10, #94), wherein each of the inflatable diagonally oriented sleeves communicate with the air entry passage for allowing entry of air from the air entry passage into the sleeves (see col. 8, lines 8-12), the air entry passage (Fig. 10, #94) is elongated in a longitudinal direction of the sheet, the sealing line extends the entire width of the sheet (see col. 2, lines 38-40 and col. 4, line 60). Regarding **claim 21**, note the inflatable diagonally oriented sleeves are welded across their horizontal length substantially the entire width of the sheet intersecting the diagonally oriented sleeves (see col. 4, lines 56-60), whereby a plurality of cellular cushioning cells (Fig. 10, #95) extend substantially the entire width of the sheet.

Regarding **claim 22**, Larson et al. discloses a cellular cushioning material sheet comprising at least two layers of plastic welded in a predetermined manner so as to have a plurality of inflatable sleeves extending in a first direction and an air entry passage (see col. 7, lines 65-68 and col. 8, lines 1-12), wherein each of the inflatable sleeves (Fig. 10,

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#95) communicates with the air entry passage (Fig. 10, #94) for allowing entry of air from the air entry passage into the sleeves; a sealing line (see col. 2, lines 38-40 and col. 4, lines 56-60) extend in a second direction intersecting the first direction; the sealing line extends into the air entry passage. Regarding **claim 23**, note the inflatable diagonally oriented sleeves are welded across their horizontal length substantially the entire width of the sheet intersecting the diagonally oriented sleeves (see col. 4, lines 56-60), whereby a plurality of cellular cushioning cells (Fig. 10, #95) extend substantially the entire width of the sheet. Regarding **claim 24**, note the cellular cushioning cells are inflated (see col. 7, line 40).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 5-8** are rejected under 35 U.S.C. 103(a) as being unpatentable over Larson et al. (4,017,351).

Larson et al. discloses a cellular cushioning material comprising a sheet formed from at least two layers made of plastic welded to each other on either longitudinal side, the at least two layers are welded to each other in a diagonal manner across their widths, forming a plurality of diagonally oriented sleeves and having at least two individual cushioning cell, when inflated (see Fig. 10; also see col. 7, lines 65-68 and col. 8, lines 1-8). However, Larson et al. fails to disclose the at least two cushioning cell being of a rhombus shape, diamond shape, parallelogram shape and a carved side shape. Normally,

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it is to be expected that a change in shape of the cushioning cell would be an unpatentable modification. Under some circumstances, however, changes such as shape may impart patentability to a product if the particular shape claimed produces a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. MPEP 2144.04 IV (B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to change the shape of the cushioning cell in Larson et al. to be of a rhombus shape, diamond shape, parallelogram shape and a carved side shape. One skilled in the art would have been motivated to do so in order to form a cellular cushioning material, since it has been held that the change in form or shape of the cushioning cell would be an unpatentable modification in absence of showing unexpected results.

7. **Claim 18** is rejected under 35 U.S.C. 103(a) as being unpatentable over Larson et al. (4,017,351) in view of Kerr (4,551,379).

Larson et al. discloses a cellular cushioning material comprising a sheet formed from at least two layers made of plastic welded to each other on either longitudinal side, the at least two layers are welded to each other in a diagonal manner across their widths, forming a plurality of diagonally oriented sleeves (see Fig. 10; also see col. 7, lines 65-68 and col. 8, lines 1-8). However, Larson et al. fails to disclose the diagonally oriented sleeves having straight edges. Kerr teaches that it is old and well-known in the analogous art to have diagonally oriented sleeves having straight edges (see Fig. 5) for the purpose of forming an inflatable cushioning material for packaging. Therefore, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made

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to have provided the diagonally oriented sleeves in Larson et al. with straight edges as suggested by Kerr in order to produce an inflatable cushioning material for packaging.


Conclusion

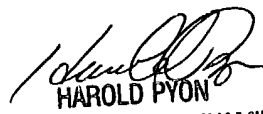
8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents are cited for further teachings of cellular cushioning material similar to that instantly disclosed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Catherine Simone whose telephone number is (571)272-1501. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Catherine Simone
Examiner
Art Unit 1772
June 24, 2004


HAROLD PYON
SUPERVISORY PATENT EXAMINER
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6/23/04